

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.F. NO.2084/2019 IN FIRST APPEAL NO.10860/2018

Naresh Rampuri Gosawi and others

..Vs..

Sanjay Prataprao Deshmukh and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.L. Khapre, Advocate for the appellants.

CORAM : NITIN W. SAMBRE, J.

DATED : 16.9.2019

1] Heard.

2] Apart from unexplained delay of 316 days caused in preferring the appeal, the order impugned passed under Section 47 of the Maharashtra Public Trusts Act thereby appointing trustees and directing them to submit a scheme for approval of the Charity Commissioner vide order dated March 23, 2017 passed by the Joint Charity Commissioner, Amravati Region Amravati is questioned.

3] The submissions of Shri Khapre are, the order impugned goes contrary to the provisions of Clause (d) and (e) of Sub-Section (3) of Section 47 of the Act as the applicants are the persons who have interest in the trust being successor in interest of the *Kisangirchi Madhi* and *Kisangir* in whose honour the trust was created by the State Government. According to him, the applicants / appellants belong to a particular community / sect to which *Kisangirchi Madhi* and *Kisangir* used to belong.

That being so, the people who are not from the community of applicants, ought not have been appointed as trustees by excluding the claim of the applicants. The learned Counsel invites attention of this Court to the judgment of this Court in the matter of *Avinash Ganpatrao Shegaonkar V/s. Jaiwant @ Babasaheb Vishwanath Uttarwar* reported in **2010 (4) Mh.L.J. 253**. According to him, the mandate given by this Court in the judgment dated March 17, 2015 on the very said issue in earlier round of litigation is not adhered to by the Joint Charity Commissioner. In addition, the submissions are, since the trust was constituted by the State Government, the State Government should have been put to notice and as such the order adverse to the interest of the State Government without hearing the State Government is also not sustainable. As such, according to him, the order impugned is liable to be quashed and set aside.

4] If the submissions canvassed by the learned Counsel for the applicants / appellants are appreciated in the backdrop of the judgment delivered by this Court in First Appeal No.260/1999 on March 17, 2015 and for the reasons which are formed to be the basis for passing the order impugned, in my opinion, the judgment impugned does not warrant any interference.

5] It appears that in earlier round of litigation this Court while dealing with the similar plea of the applicants has directed the Joint Charity Commissioner to make necessary inquiry as provided under Section 47

of the Act, and also the law laid down in the matter of *Avinash Ganpatrao Shegaonkar V/s. Jaiwant @ Babasaheb Vishwanath Uttarwar* (supra). The Joint Charity Commissioner was also permitted to consider the mode of succession.

6] In the aforesaid background, the non-applicant / respondent No.1 to the present appeal i.e. original applicant to the proceedings under Section 47 filed his affidavit Exh.55.

7] The present applicants / appellants who are objectors have chosen not to cross-examine the said witness and as such Joint Charity Commissioner proceeded further to decide the proceedings under Section 47 of the Act.

8] The respondent No.1 produced on record various documents including audit report which was submitted to the Assistant Charity Commissioner, various permissions obtained by him while celebrating the various festivals and for carrying out various rituals from the Authority. The death certificates of trustees were produced on record at Exhibits 3 to 8 were also taken into account. The Joint Charity Commissioner was sensitive to the issue as regards the mode of succession, however, since all the trustees have expired, and no proceedings were carried out during their life time for appointment of the new trustees, same has prompted the

respondent No.1 to move an application under Section 47 of the Act.

9] On an earlier occasion, it appears that the proceedings taken out under Section 47 remained pending before this Court for a considerable time of more than 10 years at the behest of present applicants and during all this period, it is respondent No.1 as is reflected in the findings, managed the trust affairs.

10] The permissions obtained by the respondent No.1 for celebrating various festivals and carrying out rituals was never objected to by the appellants in any of the proceedings taken out to that effect by the respondent No.1 for grant of permissions.

11] The Joint Charity Commissioner has considered the objections raised by the present appellants as regards they belong to *Gosavi* community and they are interested persons, however, proceeded to appoint the respondents as trustees with directions to frame a scheme in view of the fact that the respondent No.1 is managing affairs of the temple in question for last more than 20 years.

12] The photographs produced on record which were not disputed, the rituals which were followed for performing various festivals and the rituals in the temple by respondent No.1, absence of any criminal antecedents

and the interest of the respondents in the management of the trust prevailed over in passing of the order which is impugned in the appeal.

13] In the aforesaid background, the contention of the present appellants that the provisions of Sub-Clause (d) and (e) of Sub-Section (3) of Section 47 of the Act are not followed while passing the order impugned is also liable to be rejected particularly having regard to (a) when the initial trustees were appointed, the appellants have not made any grievance about the same claiming their status as ancestors, (b) the appellants have not cross-examined the respondents but for oral objections and (c) there are directions issued to the trustees to frame a scheme to which, it will be open for the appellants to raise objections / challenge.

14] The Joint Charity Commissioner while passing the order impugned has conducted appropriate inquiry in the matter and appointed respondents as trustees pursuant to the provisions of Section 47 of the Act.

15] That being so, no case for interference is made out. The application for condonation of delay so also the appeal is **rejected**. No costs.

JUDGE